

September 2005

FEDERAL PENSIONS

Judicial Survivors' Annuities System Costs



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Highlights of [GAO-05-955](#), a report to the Senate and House Committees on the Judiciary

Why GAO Did This Study

The Judicial Survivors' Annuities System (JSAS) was created in 1956 to provide financial security for the families of deceased federal judges. It provides benefits to eligible spouses and dependent children of judges who elect coverage within 6 months of taking office, 6 months after getting married, or 6 months after being elevated to a higher court, or during an open season authorized by statute. Active and senior judges currently contribute 2.2 percent of their salaries to JSAS, and retired judges contribute 3.5 percent of their retirement salaries to JSAS.

Pursuant to the Federal Courts Administration Act of 1992 (Pub. L. No. 102-572), GAO is required to review JSAS costs every 3 years and determine whether the judges' contributions fund 50 percent of the plan's costs. If the contributions fund less than 50 percent of these costs, GAO is to determine what adjustments to the contribution rates would be needed to achieve the 50 percent ratio.

GAO is not making any recommendations in this report. The Administrative Office of the United States Courts (AOUSC) believes that GAO should be recommending a reduction in the judges' contribution rate. GAO disagrees with AOUSC's interpretation of the act's requirements.

www.gao.gov/cgi-bin/getrpt?GAO-05-955.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Steven J. Sebastian at (202) 512-3406 or sebastians@gao.gov.

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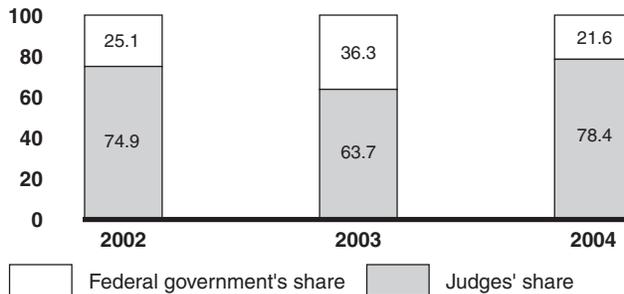
Judicial Survivors' Annuities System Costs

What GAO Found

During plan years 2002 through 2004, the participating judges' contributions funded more than 50 percent of the JSAS normal costs, as shown in the figure below. The participating judges funded approximately 75 percent of JSAS normal costs during plan year 2002, 64 percent during plan year 2003, and 78 percent during plan year 2004. On average over the 3-year period, the participating judges funded approximately 72 percent of JSAS normal costs, while the federal government funded approximately 28 percent. The variance in the government's contribution rates was a result of the fluctuation in normal costs resulting from several combined factors, such as changes in assumptions; lower-than-expected rates of return on plan assets; demographic changes—retirement, death, disability, new members, and pay increases; as well as an increase in plan benefit obligations.

JSAS Normal Costs

Percentage



Source: JSAS actuarial reports, 2002-2004.

For the 3 years covered by the review, GAO determined that an adjustment to the judges' contribution rate was not needed because their average contribution share for the review period was approximately 72 percent, which exceeded the minimum 50 percent contribution goal specified by law. In addition, GAO examined the annual share of normal costs covered by judges' contributions over a 9-year period and found that on average the participating judges funded approximately 55 percent of JSAS's normal costs.

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Abbreviations

AOUSC	Administrative Office of the United States Courts
COLA	cost-of-living adjustment
CSRS	Civil Service Retirement System
FERS	Federal Employees' Retirement System
JSAS	Judicial Survivors' Annuities System
NC	normal cost
PVFNC	present value of future normal costs

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United States Government Accountability Office
Washington, DC 20548

September 16, 2005

The Honorable Arlen Specter
Chairman
The Honorable Patrick J. Leahy
Ranking Minority Member
Committee on the Judiciary
United States Senate

The Honorable F. James Sensenbrenner, Jr.
Chairman
The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
House of Representatives

This report was prepared in response to the requirements of the Federal Courts Administration Act of 1992,¹ which requires that we review certain aspects of the Judicial Survivors' Annuities System (JSAS). JSAS is the only survivor benefit plan available to Article III judges and certain non-Article III judges. JSAS provides annuities to surviving spouses and dependent children of deceased Supreme Court justices, deceased judges of the United States, and other deceased judicial officials² who participated in JSAS.

The 1992 act enhanced the benefits available from JSAS and reduced the amounts that participating judges were required to contribute toward the plan's costs. The act requires us to review JSAS costs every 3 years and to determine whether the judges' contributions fund at least 50 percent of the plan's costs. If the contributions fund less than 50 percent of these costs, we are to determine what adjustments to the contribution rates are needed to achieve the 50 percent ratio.

The judicial system has determined that JSAS costs are the same as normal costs; for this review, we have examined the normal cost of the

¹Pub. L. No. 102-572, 106 Stat. 4506 (Oct. 29, 1992).

²For simplicity, we will refer to the collective group of judicial participants as "judges" throughout this report.

plan. The plan's actuary, using the plan's funding method—in this case, the aggregate cost method³—determines the plan's normal cost. Under the aggregate cost method, the normal cost is the level percentage of future salaries that will be sufficient, along with investment earnings and the plan's assets, to pay the plan's benefits. This is our fourth report since the passage of the 1992 act.⁴

Results in Brief

For each of the 3 years covered by our review, the judges' contributions funded more than 50 percent of JSAS normal costs. The participating judges funded approximately 75 percent of JSAS normal costs during plan year 2002, 64 percent of JSAS normal costs during plan year 2003, and 78 percent of JSAS normal costs during plan year 2004. On the basis of data from plan years 2002, 2003, and 2004 actuarial reports, participating judges funded, on average, approximately 72 percent of JSAS normal costs; the federal government's contribution amounted to, on average, approximately 28 percent. While the judges' contribution rate remained fixed at 2.2 percent and 3.5 percent of salaries for active participants and retired judges, respectively, the federal government contribution rate fluctuated from 0.80 percent of salaries in plan year 2002, to 1.34 percent of salaries in plan year 2003, and to 0.65 percent of salaries in plan year 2004.

The variance in the federal government's contribution rates was a result of the fluctuation in normal costs resulting from several combined factors, such as changes in assumptions; lower-than-expected return on plan assets; demographic changes—retirement, death, disability, new members, and pay increases; as well as an increase in plan benefit obligations. Based on our work for the 3 years covered by our review, we determined that an adjustment to the judges' contribution rate was not needed because their average contribution share for the review period was approximately 72 percent, which exceeded the 50 percent minimum contribution goal specified by law.

³The aggregate cost method is essentially the spreading of any unfunded present value of future benefits as a level percentage of the future payroll.

⁴GAO, *Federal Pensions: Judicial Survivors' Annuities System Costs*, [GAO-02-763](#) (Washington, D.C.: June 26, 2002); *Federal Pensions: Judicial Survivors' Annuities System Costs*, [GAO/GGD-00-125](#) (Washington, D.C.: May 25, 2000); and *Federal Pensions: Judicial Survivors' Annuities System Costs and Benefit Levels*, [GAO/GGD-97-87](#) (Washington, D.C.: June 27, 1997).

One of the major reasons JSAS benefits were enhanced and judges' contribution rates were reduced in 1992 was to increase participation in JSAS. If judges continue to pay an increasing share of the normal cost of the plan, however, their rate of participation might decline. In part because of the comparatively small number of participants, short-term variability can be expected in JSAS normal costs; therefore, a long-term view is important when evaluating the portion of normal costs covered by judges. From plan year 1996 to plan year 2004, the annual contribution of normal costs funded by judges' contributions has averaged approximately 55 percent.

In commenting on a draft of this report, the Administrative Office of the United States Courts (AOUSC) raised the issue of parity between the participating judges and the federal government with respect to funding of JSAS. It also noted that we did not propose a reduction in the contribution rates of judges given that their share of JSAS costs for the 3-year period covered by this report exceeded 50 percent of the total normal costs of the program. We disagree with AOUSC's view as to the purpose of section 201(i) of the Federal Courts Administration Act of 1992.⁵ Since the enactment of the act, we have interpreted this section as providing that a minimum percentage of the costs of the program be borne by its participants. We have consistently applied this interpretation of the act's requirement in all of our previous mandated reviews.

Background

Most federal civilian employees are covered by the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System. Both of these retirement plans include survivor benefit provisions. Three separate retirement plans apply to various groups of judges in the federal judiciary, with JSAS being available to participants in all three retirement plans to provide annuities to their surviving spouses and children. Appendix I provides additional information regarding retirement plans that are available to federal judges.

⁵Section 201(i) says "the Comptroller General of the United States shall, at the end of each 3-fiscal year period, determine whether the contributions by judicial officials ... during that 3-year period accounted for 50 percent of the costs of the Judicial Survivors' Annuities Fund and if not, then what adjustments in the contribution rates ... should be made to achieve that 50 percent figure." *See 28 U.S.C. §376(w)*.

History of JSAS

JSAS was created in 1956 to help provide financial security for the families of deceased federal judges. It provides benefits to surviving eligible spouses and dependent children of judges who participate in the plan. Judges may elect coverage within 6 months of taking office, 6 months after getting married, or 6 months after being elevated to a higher court, or during an open season authorized by statute. Active and senior judges currently contribute 2.2 percent of their salaries to JSAS, and retired judges contribute 3.5 percent of their retirement salaries to JSAS. Upon a judge's death, the surviving spouse is to receive an annual annuity that equals 1.5 percent of the judge's average annual salary during the 3 highest consecutive paid years (commonly known as the high-3) times the judge's years of creditable service. The annuity may not exceed 50 percent of the high-3 and is guaranteed to be no less than 25 percent. Separately, an unmarried dependent child under age 18, or 22 if a full-time student, receives a survivor annuity that is equal to 10 percent of the judge's high-3 or 20 percent of the judges' high-3 divided by the number of eligible children, whichever is smaller. JSAS annuitants receive an annual adjustment in their annuities at the same time, and by the same percentage, as any cost-of-living adjustment (COLA) received by CSRS annuitants. Spouses and children are also eligible for Social Security survivor benefits.

Since its inception in 1956, JSAS has changed several times. Because of concern that too few judges were participating in the plan (74 percent of federal judges participated in 1985, which was down from 90 percent in 1976), Congress made broad reforms effective in 1986 with the Judicial Improvements Act of 1985.⁶ The 1985 act (1) increased the annuity formula for surviving spouses from 1.25 percent to the current 1.5 percent of the high-3 for each year of creditable service and (2) changed the provisions for surviving children's benefits to relate benefit amounts to judges' high-3 rather than the specific dollar amounts provided in 1976 by the Judicial Survivors' Annuities Reform Act.⁷ In recognition of the significant benefit improvements that were made, the 1985 act increased the amounts that judges were required to contribute from 4.5 percent to 5 percent of their salaries, including retirement salaries.

The 1985 act also changed the requirements for government contributions to the plan. Under the 1976 Judicial Survivors' Annuities Reform Act, the

⁶Pub. L. No. 99-336, 100 Stat. 633 (June 19, 1986).

⁷Pub. L. No. 94-554, 90 Stat. 2603 (Oct. 19, 1976).

government matched the judges' contributions of 4.5 percent of salaries and retirement salaries. The 1985 act modified this by specifying that the government would contribute the amounts necessary to fund any remaining cost over the future lifetime of current participants. That amount is limited to 9 percent of total covered salary each year. Despite the benefit improvements in the 1985 act, the rate of participation in JSAS continued to decline. In 1991, the rate of participation was about 40 percent overall and 25 percent for newly appointed judges.

In response to concerns that required contributions of 5 percent may have created a disincentive to participate, Congress enacted the Federal Courts Administration Act of 1992. Under this act, participants' contribution requirements were reduced to 2.2 percent of salaries for active and senior judges and 3.5 percent of retirement salaries for retired judges. The 1992 act also significantly increased benefits for survivors of retired judges. This increase was accomplished by including years spent in retirement in the calculation of creditable service and the high-3 salary averages.⁸ Additionally, the 1992 act allowed judges to stop contributing to the plan if they ceased to be married and granted benefits to survivors of any judge who died in the interim between leaving office and the commencement of a deferred annuity.⁹

As of September 30, 2004, there were 1,329 active and senior judges, 207 retired judges, and 304 survivor annuitants covered under JSAS, compared with 1,265 active and senior judges, 193 retired judges, and 283 survivor annuitants as of September 30, 2002.

Defining Cost for JSAS

AOUSC is responsible for administering and maintaining reliable information on JSAS. JSAS is financed by judges' contributions and direct appropriations in an amount estimated to be sufficient to fund future benefits paid to survivors of current and deceased participants.¹⁰ The federal government's contribution is approved through an annual appropriation and is not based on a rate or percentage of the judges' salaries.

⁸The 1992 act changes include senior judges and judges who resign from their offices.

⁹A judge who is not entitled to receive an immediate annuity upon leaving office, but who is eligible to receive a deferred annuity at a later date, may—upon written notification—remain in JSAS by contributing a sum equal to 3.5 percent of the deferred annuity.

¹⁰JSAS investments are made only in U.S. Treasury securities.

To determine the annual contribution of the federal government, AOUSC engages an enrolled actuary¹¹ to perform the calculation of funding needed based on the difference between the present value of the expected future benefit payments to participants and the value of net assets in the plan. Appendix II provides more details on the formulas used to determine participants' and the federal government's contributions and lump sum payments.

The cost of a retirement or survivor benefit plan is typically not measured by annual expenditures for benefits. Such expenditures are not an indicator of the overall long-term cost of a plan. The more complete calculation of a plan's cost is the present value of projected future outlays to retirees or survivors, based on the current pool of participants, with such costs allocated annually. This annual cost allocation is referred to as the normal cost. Normal cost calculations, prepared by an actuary, are estimates and require that many actuarial assumptions be made about the future, including mortality rates, turnover rates, returns on investment, salary increases, and COLA increases over the life spans of current participants and beneficiaries. The plan's actuary, using the plan's funding method—in this case, the aggregate cost method—determines the plan's normal cost. Under the aggregate cost method, the normal cost is the level percentage of future salaries that will be sufficient, along with investment earnings and the plan's assets, to pay the plan's benefits for current participants and beneficiaries. There are many acceptable actuarial methods for calculating normal cost. Regardless of which cost method is chosen, the expected total long-term cost of the plan should be the same; however, year-to-year costs may differ, depending on the cost method used.

Objectives, Scope, and Methodology

Our objectives were to determine whether participating judges' contributions for the 3 plan years ending on September 30, 2004, funded at least 50 percent of the JSAS costs and, if not, what adjustments in the contribution rates would be needed to achieve the 50 percent ratio. To satisfy our objectives, we examined the normal costs reported in the JSAS annual report submitted by AOUSC to the Comptroller General for plan

¹¹An enrolled actuary is an individual who has been licensed by the Joint Board for the Enrollment of Actuaries to perform a variety of actuarial tasks that the Employee Retirement Income Security Act of 1974 mandates for private sector defined benefit pension plans in the United States.

years 2002 through 2004.¹² We also examined participants' contributions, the federal government's contribution, and other relevant information in each annual report. An independent accounting firm hired by AOUSC audited the JSAS financial and actuarial information included in the JSAS annual reports, with input from an enrolled actuary regarding relevant data, such as actuarial present value of accumulated plan benefits. An enrolled actuary certified those amounts that are included in the JSAS annual reports. We discussed the contents of the JSAS reports with officials from AOUSC for the 3 plan years (2002 through 2004). In addition, we discussed with the enrolled actuary the actuarial assumptions made to project future benefits of the plan. We did not independently audit the JSAS annual report or the actuarially calculated cost figures.

We performed our review in Washington, D.C., from May 2005 through July 2005, in accordance with U.S. generally accepted government auditing standards. We made a draft of this report available to the Director of AOUSC for review and comment. The Director's comments are reprinted in appendix III.

Judges Paid More Than Half of JSAS's Costs

For each of the JSAS plan years 2002 through 2004, participating judges funded more than 50 percent of the JSAS normal costs. In plan year 2002, participating judges paid approximately 75 percent of JSAS normal costs, and in plan years 2003 and 2004, they paid approximately 64 and 78 percent of JSAS normal costs, respectively.

On the basis of data from plan years 2002, 2003, and 2004, participating judges paid, on average, approximately 72 percent of JSAS normal costs while the federal government's share amounted to approximately 28 percent. Table 1 shows judges' and the federal government's contribution rates and shares of JSAS normal costs (using the aggregate cost method, which is discussed in app. II) for the period covered in our review.

¹²In prior years, this report was submitted to Congress in compliance with chapter 95 of Title 31, *U.S. Code*, and in accordance with GAO's instructions. This requirement was repealed by Pub. L. No. 105-362 on November 10, 1998, but AOUSC continues to prepare the report by adhering to GAO instructions with regard to report format and content.

Table 1: Percentage Share of JSAS Normal Costs Borne by Participating Judges and the Federal Government, Plan Years 2002-2004

Source of funds	JSAS normal cost rates and shares						2002-2004 Average share ^c
	2002		2003		2004		
	Rate ^a	Share ^b	Rate ^a	Share ^b	Rate ^a	Share ^b	
Judges	2.39	74.9	2.35	63.7	2.36	78.4	72.3
Federal government	.80	25.1	1.34	36.3	.65	21.6	27.7
Total normal costs	3.19	100.0	3.69	100.0	3.01	100.0	100.0

Source: JSAS actuarial reports, 2002-2004.

^aNormal cost expressed as a percentage of participants' salaries.

^bPercentage of total normal costs.

^cThis represents the average of the annual share of JSAS normal costs.

The judges' and the federal government's contribution rates for each of the 3 years, shown in table 1, were based on the actuarial valuation that occurred at the end of the prior year. For example, the judges' contribution rate of 2.39 percent and the federal government's contribution rate of 0.80 percent in plan year 2002 were based on the September 30, 2001, valuation contained in the plan year 2002 JSAS report.

The judges' contribution of JSAS normal costs shown in table 1 fluctuated from approximately 75 percent in plan year 2002, to approximately 64 percent in plan year 2003, and to 78 percent in plan year 2004. The federal government's contribution of JSAS normal costs also varied, from approximately 25 percent in plan year 2002, to approximately 36 percent in plan year 2003, and to approximately 22 percent in plan year 2004. During those same years, judges' contribution rates remained almost constant, while the federal government's contribution rate increased from 0.80 percent of salaries in plan year 2002 to 1.34 percent of salaries in plan year 2003, and then decreased to 0.65 percent in plan year 2004. The variance in the federal government's contribution rates was a result of the fluctuation in normal costs resulting from several combined factors, such as changes in assumptions; lower-than-expected return on plan assets; demographic changes—retirement, death, disability, new members, and pay increases; as well as an increase in plan benefit obligations.

Specifically, the value of total plan assets increased from \$473.8 million in plan year 2002 to \$484.0 million in plan year 2003, and then decreased to

\$479.8 million in plan year 2004. However, accumulated plan benefit obligations increased steadily, from \$385.4 million in plan year 2002, to \$388.5 million in plan year 2003, and to \$393.9 million in plan year 2004. Although the judges' contribution rate remained fairly constant, their contribution of normal costs rose to approximately 78 percent in plan year 2004 because total normal costs decreased. During 2004 plan year, contributions from the federal government and judges totaled almost \$5.1 million, somewhat less than the actuarial cost of \$6.9 million. A primary reason for the difference between total contributions and the plan's actuarial cost was that the approximately 1.3 percent return on the market value of plan assets was lower than the 6.25 percent assumed rate of investment return on plan assets. The resulting actuarial loss increased the required contribution level for the plan by 0.82 percent of total payroll for participating judges.

Adjustment to Contribution Rates Not Needed

Based on information in JSAS actuarial reports for the 3 years under review, we have determined that participating judges' future contributions do not have to increase in order to cover the minimum 50 percent of JSAS costs required by the Federal Courts Administration Act. We found that the current contribution rates of 2.2 percent of salaries for active and senior judges and 3.5 percent of retirement salaries for retired judges are sufficient to cover at least 50 percent of JSAS costs.¹³ As shown in table 1, the judges' average contribution for JSAS costs for this review period was approximately 72 percent, which exceeded the 50 percent contribution goal for judges.

Because future normal costs are estimates that may change in any given year, adjusting judges' contribution rates¹⁴ whenever they are found to be generating more or less than 50 percent of JSAS costs is not practical. Future normal costs may change because of certain events that occur

¹³There is a distinction between retired judges who resign their offices and those who retire to a status designated as "senior." Judges who retire by resignation are entitled for life to the salary of the office at the time of resignation and may engage in private law practice. Judges who retire to senior status receive the current salary of the office—that is, they receive salary increases that are approved for active judges and generally may perform reduced judicial duties. Senior judges may not engage in private law practice.

¹⁴Because current statutory provisions governing participant contribution rates do not give AOUSC the authority to modify the contribution rate of participants, new legislation would be required. No new legislation governing participant contribution rates has been enacted since the 1992 Federal Courts Administration Act.

during the course of a year, such as the number of survivors or judges who die, the number of new judges electing to participate in JSAS, and the number of judges who retire, and because the values of, and rates of return on, plan assets could create normal statistical variances that would affect the annual normal costs of the plan. Because the plan has only 1,536 participants and 304 survivor annuitants, such variances can have a significant effect on expected normal costs and lead to short-term variability. Therefore, it is important to take a long-term view when evaluating whether contribution rates for judges are appropriate to achieve a 50 percent JSAS contribution share for judges.

For example, as shown in table 2, although the judges' contribution share for plan year 2004 was approximately 78 percent, the judges' average contribution share for plan years 1996 through 2004 was approximately 55 percent—significantly closer to the 50 percent contribution goal.

Table 2: Average Percentage Share of Contribution for Judges and the Federal Government

Plan year	1996	1997	1998	1999	2000	2001	2002	2003	2004	Average share ^a
Aggregate normal costs ^b	6.26	5.77	5.07	3.86	4.97	4.96	3.19	3.69	3.01	100.0
Government's contribution rate ^b	4.00	3.50	2.80	1.50	2.60	2.60	.80	1.34	.65	--
Judges' contribution rate ^b	2.26	2.27	2.27	2.36	2.37	2.36	2.39	2.35	2.36	--
Judges' share ^c	36.1	39.3	44.8	61.1	47.7	47.6	74.9	63.7	78.4	54.84
Government's share ^c	63.9	60.7	55.2	38.9	52.3	52.4	25.1	36.3	21.6	45.16

Source: JSAS actuarial reports, 2002-2004.

^aThis represents the average of the annual share of JSAS normal costs.

^bNormal cost expressed as a percentage of participants' salaries.

^cPercentage of total normal cost.

Another drawback to making frequent changes to the judges' contribution rate in response to short-term fluctuations in their contribution share could be a decline in JSAS participation. Increasing participation was a major reason for the changes made to JSAS in 1992. From plan years 1998 through 2004, the number of judges participating in JSAS increased 8 percent, from 1,420 to 1,536.

Agency Comments and Our Evaluation

We requested comments on a draft of this report from the Director of AOUSC or his designee. In a letter dated August 23, 2005, the Director provided written comments on the report, which we have reprinted in appendix III. AOUSC also provided technical comments, which we have incorporated as appropriate.

In its comments, AOUSC stated that our report showed that judges' contributions to JSAS have become disproportionately high, but that we were not suggesting a change in the contribution rate for judges. Specifically, AOUSC stated that we did not present in our report the adjustment that would be needed to the participating judges' contribution rates to achieve the 50 percent funding of the program's costs by the judges. In AOUSC's view, this omission is not consistent with Congress's intent in enacting the Federal Courts Administration Act of 1992.

We disagree with AOUSC's view as to the purpose of section 201(i) of the act. Since enactment, we have interpreted this section as providing a minimum percentage of the costs of the program to be borne by its participants because the statute requires us to recommend adjustments when the judges' contributions have not achieved 50 percent of the costs of the fund. We do not view the section as calling for parity between the participants and the federal government with respect to funding the program. Thus, for the 3 years covered by this review, we determined and reported that judges' contributions funded approximately 72 percent of normal costs of JSAS, and therefore, an adjustment to the judges' contribution rates was not needed under the existing legislation because the judges' contributions achieved 50 percent of JSAS costs. We have consistently applied this interpretation of the act's requirement in all of our previous mandated reviews.

However, if one were to interpret the act as calling for an equal sharing of the program's costs between participants and the government, then, on the basis of the information contained in the JSAS actuarial report as of September 30, 2004, participating judges' future contributions would have had to decrease a total of 0.86 percentage points below the current 2.2 percent of salaries for active judges and senior judges and 3.5 percent of retirement salaries for retired judges in order to fund 50 percent of JSAS costs over the past 3 years. If the decrease were distributed equally among the judges, those currently contributing 2.2 percent of salaries would have had to contribute 1.34 percent, and those currently contributing 3.5 percent of retirement salaries would have had to contribute 2.64 percent.

As we have noted both in this report and prior reports, because of the yearly fluctuations that are experienced by JSAS, short-term trends are not sufficient for use in making informed decisions. As we stated in our report, future normal costs may change because of certain events that occur during the course of a year, such as the number of survivors or judges who die, the number of new judges electing to participate in JSAS, and the number of judges who retire. Also, the values of, and rates of return on, plan assets could create normal statistical variances that would affect the annual normal costs of the plan. Therefore, it is important to take a long-term view when evaluating whether rates for judges are appropriate to achieve a 50 percent minimum JSAS contribution share for judges.

We are sending copies of this report to the Director of AOUSC. Copies of this report will be made available to others upon request. This report is also available at no charge on the GAO Web site at <http://www.gao.gov>. Please contact Steven J. Sebastian at (202) 512-3406 or sebastians@gao.gov if you or your staff have any questions concerning this report. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Hodge Herry, Assistant Director; Joseph Applebaum; Jacquelyn Hamilton; Amy Bowser; and Kwabena Ansong.



Steven J. Sebastian
Director
Financial Management and Assurance

Appendix I: Retirement Plans Available to Federal Judges

The Administrative Office of the United States Courts (AOUSC) administers three retirement plans for judges in the federal judiciary.

- The Judicial Retirement System automatically covers United States Supreme Court justices, federal circuit and district court judges, and territorial district court judges and is available, at their option, to the Administrative Assistant to the Chief Justice, the Director of AOUSC, and the Director of the Federal Judicial Center.
- The Judicial Officers' Retirement Fund is available to bankruptcy and full-time magistrate judges.
- The United States Court of Federal Claims Judges' Retirement System is available to the United States Court of Federal Claims judges.

Also, except for judges who are automatically covered under the Judicial Retirement System, judges and judicial officials may opt to participate in the Federal Employees' Retirement System (FERS)¹ or elect to participate in the Judicial Retirement System for bankruptcy judges, magistrate judges, or United States Court of Federal Claims judges.

Judges who retire under the judicial retirement plans generally continue to receive the full salary amounts that were paid immediately before retirement, assuming the judges met the age and service requirements.

Retired territorial district court judges generally receive the same cost-of-living adjustment that Civil Service Retirement System retirees receive, except that their annuities cannot exceed 95 percent of an active district court judge's salary. United States Court of Federal Claims judge retirees continue to receive the same salary payable to active United States Court of Federal Claims judges.

Those in the Judicial Retirement System and the United States Court of Federal Claims Judges' Retirement System are eligible to retire when the number of years of service and the judge's age total at least 80, with a minimum retirement age of 65, and service ranging from 10 to 15 years. Those in the Judicial Officers' Retirement Fund are eligible to retire at age 65 with at least 14 years of service or may retire at age 65 with 8 years of service, on a less than full salary retirement. Participants in all three

¹FERS is open and available to new federal employees. The Civil Service Retirement System (CSRS) has been closed to new employees since December 31, 1983. However, a newly appointed judge who had prior federal service (at least 5 years of service before January 1, 1987) may still elect CSRS.

**Appendix I: Retirement Plans Available to
Federal Judges**

judicial retirement plans are required to contribute to and receive Social Security benefits.

Appendix II: Formulas Used to Determine Judges' and the Federal Government's Contributions and Lump Sum Payments

Aggregate funding method. This method, as used by the Judicial Survivors' Annuities System (JSAS) plan, defines the normal cost as the level percentage of future salaries that will be sufficient, along with investment earnings and the plan's assets, to pay the plan's benefits for current participants and beneficiaries. The formula is as follows:

- The present value of future normal costs (PVFNC) equals the present value of future benefits less net asset value.

PVFNC is the amount that remains to be financed by judges and the federal government.

The normal cost (NC) percentage equals PVFNC divided by present value of future salaries.

Federal government contribution. The following formula is used to determine the federal government's contribution amount:

- The federal government contribution represents the portion of NC not covered by participants' contributions.

Lump sum payout. Under JSAS, a lump sum payout may occur upon the dissolution of marriage either through divorce or death of spouse. Payroll contributions cease, but previous contributions remain in JSAS. Also, if there is no eligible surviving spouse or child upon the death of a participating judge, the lump sum payout to the judge's designated beneficiaries is computed as follows:

- Lump sum payout equals total amount paid into the plan by the judge plus 3 percent annual interest accrued less 2.2 percent of salaries for each participating year (forfeited amount).

In effect, the interest plus any amount contributed in excess of 2.2 percent of judges' salaries will be refunded.

Appendix III: Comments from the Administrative Office of the United States Courts



LEONIDAS RALPH MECHAM
Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

CLARENCE A. LEE, JR.
Associate Director

WASHINGTON, D.C. 20544

August 23, 2005

Mr. Steven J. Sebastian
Director, Financial Management and Assurance
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Sebastian:

This is in response to your letter of August 8, requesting comments on the Government Accountability Office's (GAO) draft report entitled *FEDERAL PENSIONS: Judicial Survivors' Annuities System Costs* (GAO-05-955).

The draft report shows that judges' contributions to the fund have become disproportionately high, yet GAO is not suggesting a change in the contribution rate for judges. The rationale for this position is not evident. Section 201(l) of Public Law 102-572, the "Federal Courts Administration Act of 1992," imposes a straightforward reporting requirement and provides that the Comptroller General shall report to Congress at the end of each three-fiscal year period as to whether the judges' contributions represent 50 percent of the costs of the Judicial Survivors' Annuities Fund (hereinafter referred to as the "Fund") and to determine what adjustments would be needed to achieve the 50 percent figure. This provision covering GAO's review every three years is entirely neutral in direction and does not require a "50 percent minimum contribution goal" by judges for GAO to determine the adjustment amount. Yet, even though the GAO found that between fiscal years 2002 and 2004, judges' contribution accounted for 72 percent of the normal cost of the Fund, GAO omits any statement of what adjustment would be needed to achieve the 50 percent figure. In our view, this omission is not consistent with Congress' intent in enacting section 201(l).

GAO has reported to Congress twice on the necessary adjustments to achieve the 50 percent figure, including the three-year period ending on September 30, 2001, where judges paid 52 percent of the normal costs (and GAO still proposed a 0.1 percent increase in the

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judges' contribution). In addition to the statutory language of section 201(l), fairness, equity, and good government dictate that GAO state the percentage adjustment necessary to achieve parity in the judges' and government's share of the contributions to the normal costs of the Fund. The judges' share of the normal cost is so disproportionate (and is expected to remain that way until the Fund is fully funded in 2008) that it would be inappropriate for GAO to omit relevant information for lawmakers to consider when reviewing the Fund.

The financial health of the Fund is expected to continue to be robust. Nonetheless, judges are paying and will continue to pay a disproportionate share of its costs. Under JSAS, the government can contribute up to 9 percent of its cost. In 2004, the government's share fell to 0.65 percent, continuing a relatively steady decline from 4.0 percent nine years ago. The present system is unfair to judges.

As you no doubt know, Congress enacted the 1992 amendments to the JSAS in order to increase judges' participation in the program. While judges' participation in JSAS has increased since that time, a significant number of judges have declined to enroll in it. It is reasonable to believe that many of these judges have declined to participate in JSAS because of its cost. Unlike rank-and-file federal employees, who are not required to pay for survivors' benefits until retirement, judges must pay out of pocket for Judicial Survivors' Annuities System benefits throughout their tenure in office. The problem is that the combination of inadequate salary increases, rising health insurance costs, rising Federal Employees Group Life Insurance cost, and mandatory social security contributions has eroded the ability of many judges to cope with the financial hardship imposed by JSAS.

Finally, the Administrative Office questions GAO's assertion that short-term trends are not a relevant consideration when evaluating contribution rates for judges and the government. To our recollection, such a statement was not included in GAO's earlier reports in which GAO proposed increases in the judges' contribution rates. To include such a statement now that judges' contributions are disproportionately high is inappropriate and reflects a serious misunderstanding of how the Fund's normal costs are computed to the detriment of judges. Moreover, even under the assumption that a longer-term assessment would be more valid, according to GAO's own data, over the last ten years judicial contributions have exceeded the 50 percent rate and there has been a growing proportion of costs covered by judges. There is nothing in GAO's report to support the contention that this trend will change in the future. In any event, it

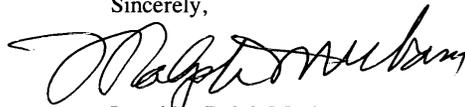
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is the Administrative Office's understanding that for the foreseeable future judges will continue to fund most of the normal costs of the Fund because of the aggregate cost method used in determining these costs.

Congress gave GAO some responsibility for maintaining the viability of the JSAS when it asked the Comptroller General to review the fund and determine what adjustments should be made to achieve parity between the government's and judges' share of the cost. In order to derive value from GAO's review of the fund every three years, it would seem necessary for GAO to reconsider its assessment methodology.

We appreciate the opportunity to review and comment on the draft report. In addition to the above comments, we have also enclosed a marked-up copy of the draft report which contains our technical corrections.

Sincerely,



Leonidas Ralph Mecham
Director

Enclosure

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